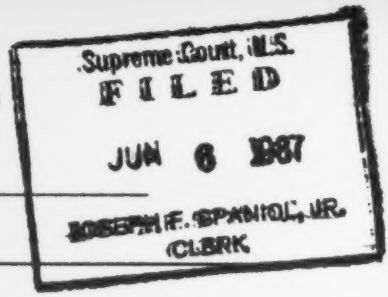

NO. 86-1929

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

NANCY W. McGINNIS,
Petitioner-Appellant

vs.

E.F. HUTTON & COMPANY, INC.,
Respondent-Appellee.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

HENRY V. SUTTON
MARK W. GARRETT
Sutton, Wilson & Garrett
Attorneys for Petitioner
100 North Main Building, Suite 2904
Memphis, TN 38103
(901) 523-1641

CHARLES G. BLACK
Counsel of Record for Filing
A Member of the Bar of the
United States Supreme Court
100 North Main Building, Suite 2901
Memphis, TN 38103
(901) 525-4618

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United States Supreme Court
100 North Main Building, Suite 2901
Memphis, TN 38103
(901) 525-4618

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

NANCY W. McGINNIS,	*	
	*	
Plaintiffs,	*	
	*	
V.	*	CASE NO. 85-2660 H
	*	
E. F. HUTTON & COMPANY, INC.,	*	
	*	
Defendant.	*	

ORDER GRANTING DEFENDANT'S MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS PENDING ARBITRATION

Plaintiff brings this action for claims arising from her termination of employment with defendant. Plaintiff claims her termination constituted outrageous conduct, as well as a breach of an express or implied employment contract. Defendant moved this Court to compel arbitration in this action, and stay further proceedings in this Court pending arbitration. After a review of the motion, and the memoranda in support of, and in opposition to it; the Court rules the motion should be granted. Plaintiff made application for registration with

the New York Stock Exchange. The forms used for that application were two Uniform Application for Securities Industries Registration forms; ("U-4"). Covenant five of the U-4 provides:

> I [applicant] agree to arbitrate any dispute, claim or controversy that may arise between me and my firm/or a customer, or any other person, that is required to be arbitrated under the rules, constitutions or bylaws of the organizations with which I register, as indicated in Question 8. (Emphasis added).

Plaintiff became registered with the New York Stock Exchange, and as such she was governed by Rule 347 of the Board of the New York Stock Exchange. That rule states in pertinent part:

> Any controversy between a registered representative and any member or member organization arising out of employment or termination of employment of such registered representative by and with such member or member organization shall be settled by arbitration, at the instance of any such party, in accordance with the arbitration proceedure prescribed elsewhere in these rules. (Emphasis added).

Plaintiff contends that she is not bound by either Covenant 8, nor Rule 347 in that she was employed as an "Operations Manager," and not as a "Broker" or a "Stock Broker."

Conclusions of Law: Our analysis of this case begins by recognizing that any duty to arbitrate is founded on a contractual obligation. Aspero v. Shearson/American Express, Inc., No. 84-6059 (6th Cir. July 17, 1985). Thus, a party may not be compelled to arbitrate unless the party has agreed to submit the dispute to arbitration. United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582 (1960). A court must determine the intent of the parties as evidenced by the contract language. Morgan v. Smith Barney Harris Upham & Co., 729 F.2d 1163, 1165 (8th Cir. 1984). Yet, it is well settled that federal policy favors arbitration. See 9 U.S.C. §§1-14 (1982). Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24-25. "[A]s a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Id. Numerous cases in other circuits have held the contractual obligation to arbitrate compels even the arbitration of job related

disputes after termination of the employment contract. Morgan supra at 1167; Aspero, supra at 5. The Court finds the claims arising in this action clearly fall in the area contemplated by the arbitration clauses of the U-4 and Rule 347. The New York Stock Exchange registered the plaintiff subject to its registration requirements. Plaintiff cannot now in retrospect abandon those agreements, especially after having first enjoyed the benefits of the bargain. Further, the Court gives due deference to the Federal Arbitration Act, 9 U.S.C. § 3 which mandates that a district court, upon application of one of the parties stay proceedings pending arbitration, where a written agreement to arbitrate exists. In this case such an agreement does exist.

Therefore, for the reasons herein stated, it is ORDERED, ADJUDGED and DECREED, that the parties submit to arbitration pursuant to those guidelines established under Rule 347 of the Board of the New York Stock Exchange. Further, all proceedings in this action are hereby STAYED

pending such arbitration, and further order of this Court.

ENTERED this 27th day of November, 1985.

/s/ Odell Horton
ODELL HORTON, JUDGE
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

This will certify that I, CHARLES G. BLACK, a member of the Bar of this Court, have served three (3) copies of the foregoing Supplemental Appendix on Frederick J. Lewis, Attorney for Respondent E.F. Hutton & Company, Inc., by depositing same in the United States Mail, first-class, postage prepaid, addressed to his post office address, 1700 One Commerce Square, Memphis, Tennessee 38103, on this the 2 day of June, 1987. All parties required to be served have been served.

Charles G. Black

CHARLES G. BLACK